



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

JUL 25 2003

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Washington, D.C. 20590

Ms. Candice Graf
Logistics Specialist
CERAC Incorporated
P.O. Box 1178
Milwaukee, WI 53201-1178

Ref. No. 03-0150

Dear Ms. Graf:

This responds to your June 24, 2003 letter requesting clarification on the use of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) and the International Civil Aviation Organization (ICAO) Technical Instructions when shipping hazardous materials by aircraft under § 171.11 of the HMR.

According to your letter, your customers prefer to ship out of New York to take advantage of cheaper rates on consolidation flights. UPS is their preferred carrier from Milwaukee to New York. UPS requires its customers to ship in accordance with the HMR, in addition to adding its own UPS requirements. Your customers request that you send any of the additional packaging, documentation, marking, labeling, etc. that is required under international regulations to the forwarder in New York for it to use to prepare the shipment for its international segment. Your company would be certifying the shipment in compliance with applicable regulations; however, you would have no control over its preparation in New York. In addition, you also state that the New York forwarder informed you that he is not trained in the international regulations.

Your customers do not want to incur additional expenses in order for the untrained New York forwarder to find a trained person to prepare the international segment in accordance with the appropriate international regulations. You ask for suggestions on how to remedy this situation and if the forwarder is asking you do something illegal by providing certification for the international segment of the shipment.

Section 171.11 of the HMR authorizes the use of the ICAO Technical Instructions in lieu of the HMR for packaging, marking, labeling, classifying, and describing hazardous materials that are transported by air or by motor vehicle either before or after being transported by air. Dual certification, marking, and labeling of your shipment is not prohibited. Therefore, for the domestic portion of the shipment, you may prepare and certify both domestic and international shipping documents, dual mark and label the packages, attach the international shipping documents to the side of the package marked and labeled for international transportation, and, submit to UPS for transportation from Milwaukee to New York.



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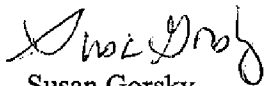
171.11

Since you prepared and certified the shipment for both domestic and international transportation, and as long as there are no changes made, the forwarder in New York may use the attached certified international shipping documents for the international portion of the shipment from New York to Israel.

However, if UPS will not accept the shipment with dual marking and labeling, then you may need to use a different carrier that will accept the shipment. If you choose to continue to ship via UPS under the HMR, the New York forwarder is responsible for preparing and certifying the shipment for the international transportation, and, the forwarder must be trained. It is a violation of the HMR for an untrained person to prepare and certify a hazardous material shipment. The HMR requires a hazmat employer to ensure that each of its hazmat employees is trained and retrained at least every three years. International regulations require training at least every two years. See Appendix A to Part 107 of the HMR, List of Frequently Cited Violations for baseline fines/assessments for violation for failure to train hazmat employees.

I hope this answers your inquiry.

Sincerely,



Susan Gorsky

Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards



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§ 171.11
ICAO
03-0150

Re: Letter of Clarification

We have had on going problems with requests for hazardous materials for the last couple of years from our customers in Israel. Our Israel customers like to ship out of New York because they get cheap rates on consolidation flights. The regulatory problem lies within the Milwaukee to New York logistics segment where they request the shipment is sent via UPS from CERAC to their forwarder in New York. The problem is that UPS follows regulations per the DOT in addition to adding their own stringent UPS requirements and the forwarder wants the shipment prepared in accordance with international regulations under IATA/ICAO. For instance many products like our poisons and dangerous when wet, require a DOT Exemption box for UPS shipments.

We have tried to explain to our customers in Israel that CERAC cannot follow both sets of regulations, it has to be one or the other from our dock. They have also requested in the past that we send it UPS to the forwarder and then send any of the additional packaging, documentation, marking, labeling, etc. that is required under the international regulations to the forwarder in New York for them to prepare the shipment for its international segment. The problem with this is that CERAC would be certifying on the documents that the shipment is in compliance with the applicable regulations but we would be removed from the preparations. In one of the conversations I had with the forwarder in New York he told me that we have to send him the required packaging, marking, labeling, and documentation for the international segment because he is not trained in the international regulations.

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Our Israel customers think that we are unwilling to provide them with the "free" documents and have caused them additional expenses in the forwarder seeking a firm to prepare these shipments in accordance with the appropriate regulations. I have tried to explain the shipper certification is not something you take lightly. Is it illegal what the forwarder is asking us to do? Are you familiar with this practice? How else can I remedy this situation in compliance with applicable regulations?

I look forward to hearing any additional input you may have in regards to this situation or just confirmation that I understand to regulatory ramifications of what they are asking me to do.



Candice Graf

Logistics Specialist